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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 407

JOE LASH, Petitioner,

vs.

STATE OF ALABAMA

BRIEF IN OPPOSITION TO PETITION FOR A

WRIT OF CERTIORARI

BRIEF FOR RESPONDENT

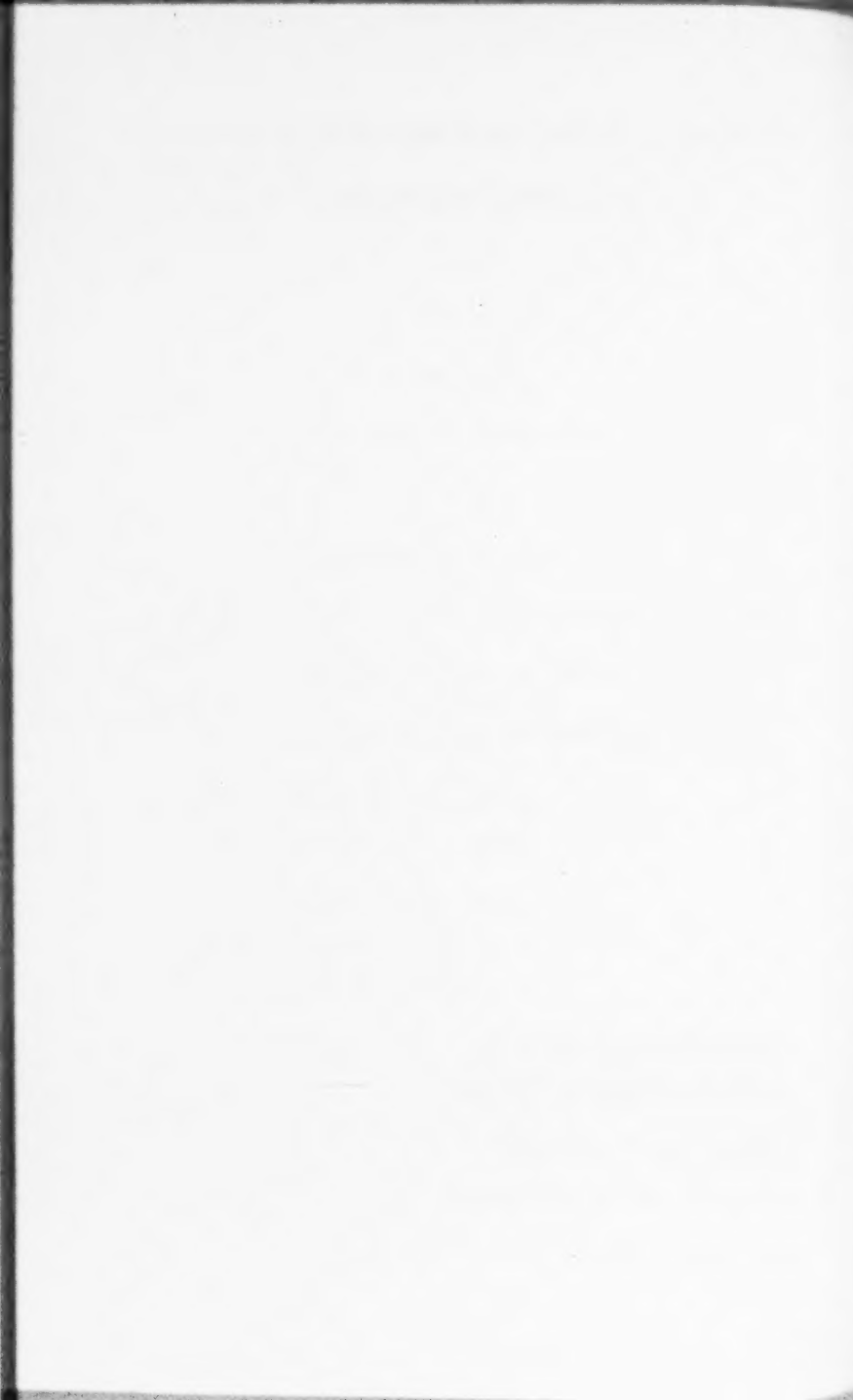
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I

THE OPINION OF THE COURT BELOW.

The opinion of the Court of Appeals of Alabama is reported in 14 Southern (2d) 229 (R. 70), certiorari denied by the Alabama Supreme Court, June 10, 1943, application for rehearing denied by the Alabama Supreme Court, June 30, 1943. The opinion of the Supreme Court of Alabama, on which the decision of the Court of Appeals was predicated, is reported in 14 Southern (2d) 235 (R. 76).

II

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court to review the judgment of the Court of Appeals of Alabama predicated upon an opinion of the Supreme Court of Alabama, certiorari denied by the Alabama Supreme Court June 10, 1943, application for rehearing overruled by Alabama Supreme Court June 30, 1943. Petitioner relies upon Section 237, subsection (b) of the United States Judicial Code, as amended on February 13, 1935, (U.S.C.A. Title 28, Section 344), as giving this Court jurisdiction.

III

POINTS RELIED UPON BY PETITIONER

The points relied upon by petitioner as grounds for relief are as follows:

That the Court of Appeals of Alabama and the Supreme Court of Alabama erred in holding that Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54, Code 1940) was not void on its face or as applied in the instant case as depriving petitioner of freedom of speech and assembly.

That the Court of Appeals of Alabama and the

Supreme Court of Alabama erred in holding that petitioner was not deprived of liberty without due process because convicted on charges not made.

That the Court of Appeals of Alabama and the Supreme Court of Alabama erred in holding that petitioner was not deprived of liberty without due process in being convicted under a statute so vague and indefinite as not to apprise him of its meaning.

IV

STATEMENT OF THE CASE

The petitioner, Joe Lash, together with several others, was arrested on October 16, 1941, pursuant to an affidavit and a warrant of arrest sworn to by one C. P. Hansel, in which it was alleged that they did "without just cause or legal excuse for so doing enter into a combination, conspiracy, agreement, arrangement or understanding for the purpose of hindering, delaying, or preventing C. P. Hansel from carrying on a lawful business, to-wit, the business of building houses * * *, against the peace and dignity of the State of Alabama."

The said affidavit and warrant of arrest was predicated upon, and in substantially the same language as Section 3447 of the Code of 1923 of Alabama (Title 14, Section 54, Code of 1940), which statute provides as follows:

“§ 54. Conspiracy, combination or agreement to interfere with or hinder business, unlawful. —Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor.”

On November 18, 1941 petitioner and the other persons charged in the affidavit demanded separate trials. The demurrer and plea filed by petitioner attacking the charge against him on the constitutional grounds now relied upon by him being overruled by the trial court, testimony and evidence of the facts were taken resulting in a finding by the trial court of guilty, there being no jury demanded.

The evidence presented indicated that the petitioner, with many others, formed a picket line around the said C. P. Hansel's place of business presumably for the purpose of enforcing their demands upon him for a “closed shop.” The testimony further showed, and the trial court and the Alabama Court of Appeals so found, that attendant to the said picketing were numerous acts of violence and disorder, namely: the throwing of rocks, damage to property, the making of threats, and the ill treatment of non-striking employees of the said C. P. Hansel.

Subsequent to the trial court's finding of guilty, petitioner appealed to the Alabama Court of Appeals, which court, after its perusal of the record sustained the lower court's finding of fact as to the violence, but, because of its lack of authority to pass upon the constitutionality of a statute, certified this question of law to the Alabama Supreme Court. The latter court held that the phrase "without just cause and legal excuse" contained in the statute in question, meant "unlawful" or "violent" and that when so applied, the statute was a reasonable exercise of the State's police power in protecting its citizens against violent and disorderly conduct.

Pursuant to this opinion of the Supreme Court of Alabama the Court of Appeals of Alabama sustained the conviction. On June 10, 1943 the Supreme Court of Alabama rendered an opinion denying petition for certiorari and on June 30, 1943 the same court denied petitioner's application for rehearing.

PROPOSITIONS OF LAW

PROPOSITION I

The construction of a state statute by the highest court of that state affords a federal court a binding interpretation of its scope and meaning from which the statute's validity, under the Constitution of the United States, is determinable by the federal court; and the federal court will not give a different construction to the statute which will make it repugnant to the Constitution of the United States.

Smiley v. State of Kansas, 49 L. Ed. 546, 196 U.S. 447;

W. W. Cargill Co. v. State of Minnesota ex rel Railroad & Warehouse Commission, 45 L. Ed. 619, 180 U. S. 453;

Stuart Lindsley v. Natural Carbonic Gas Company, 55 L. Ed. 369, 220 U. S. 61;

Henning Jacobson v. Massachusetts, 49 L. Ed. 643, 197 U. S. 11;

Hughes Federal Practice, Vol. 6, Section 3708, Page 235, Note 85 and cases cited.

Hosea B. Tullis v. Lake Erie & Western R.R. Co., 44 L. Ed. 192, 175 U. S. 34;

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N. Y., Lake Erie & Western R. R. Co. v. Pennsylvania, 39 L. Ed. 1043, 158 U. S. 431;

Hughes Federal Practice, Vol. 6, Section 3708, Page 235, Note 86 and cases cited.

PROPOSITION II

There is here presented no federal question on which the Supreme Court of the United States has not heretofore passed; its numerous decisions unequivocally uphold a state's right under its police power to protect its citizens against manifestations of force and violence.

Milk Wagon Drivers Union vs. Meadowmoor Dairies, Inc., 312 U. S. 287;

Thornhill vs. Alabama, 310 U. S. 88.

ARGUMENT

I

THE CONSTRUCTION OF A STATE STATUTE BY THE HIGHEST COURT OF THAT STATE AFFORDS A FEDERAL COURT A BINDING INTERPRETATION OF ITS SCOPE AND MEANING FROM WHICH THE STATUTE'S VALIDITY UNDER THE CONSTITUTION OF THE UNITED STATES IS DETERMINABLE BY THE FEDERAL COURT, AND THE FEDERAL COURT WILL NOT GIVE A DIFFERENT CONSTRUCTION TO THE STATUTE WHICH WILL MAKE IT REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

It has been held repeatedly that the interpretation of a state statute by the highest court of the state will not be disregarded by the Supreme Court of the United States, nor will the latter court give to the statute a different construction which will make it repugnant to the Constitution of the United States. That this statement is uncontrovertible, the attention of the Court is directed to those cases cited under Proposition of Law No. I.

The able brief of Counsel for petitioner relies heavily, if not solely, upon the case of *Thornhill vs. Alabama*, 310 U. S. 88, in which Mr. Justice Murphy, speaking for the Court, struck down an Alabama

statute which not only purported on its face, but was so applied, to proscribe picketing in any form, peaceful or otherwise. However, the statute considered in the Thornhill case could not have been, by previous judicial construction, directed only to unlawful or violent picketing. An attempt had been made to apply it to all forms of picketing, hence its unconstitutionality.

But similar circumstances are not here found. The State of Alabama has indicated no intention to impair the fundamental right of an employee to picket peacefully and orderly for the enforcement of his just demands. Rather, the statute in question, as construed and applied, is only an effort of the State of Alabama to protect its citizens from unlawful and violent acts. To effect this exercise of its police power the State of Alabama has seen fit to make criminal a conspiracy or combination to engage in such unlawful and violent acts. This is the only question brought before this Court for decision. According to its numerous decisions, this Honorable Court will consider the statute in question only in the light of its construction by the highest court of the state.

II

THERE IS HERE PRESENTED NO FEDERAL QUESTION ON WHICH THE SUPREME COURT OF THE UNITED STATES HAS NOT HERETOFORE PASSED; ITS NUMEROUS DE-

CISIONS UNEQUIVOCALLY UPHOLD A STATE'S RIGHT UNDER ITS POLICE POWER TO PROTECT ITS CITIZENS AGAINST MANIFESTATIONS OF FORCE AND VIOLENCE.

It is the opinion of Counsel for the State that this case is within the scope and operation of the case of *Milk Wagon Drivers Union vs. Meadowmoor Dairies, Inc.*, 312 U. S. 287. In that case, as in the case at bar, members of the union were exercising their right to picket the business of the employer in order to enforce certain demands made upon the employer. The right to strike and picket constitute fundamental and constitutional guaranties without which the working man would be at the mercy of his employer, and compelled to bargain with him individually. The exercise of these rights is a manifestation of freedom of speech. If the statute in question were enacted and applied to prohibit, as the petitioner contends, an agreement or arrangement to exercise the right to picket, admittedly, it would be a vehicle of abuse approaching the millennium in oppression and injustice.

However, the application of the statute has been narrowed by the interpretation of the Supreme Court of Alabama that it is not to be so perniciously applied. Rather, its scope of operation precludes agreements to peacefully picket, and includes only agreements to engage in unlawful and violent acts, whether such acts occur as a result of picketing or otherwise.

In the Meadowmoor case Mr. Justice Frankfurter recognized that the exercise of freedom of speech by picketing is of such fundamental and paramount importance that it cannot be impaired. However, the Justice proceeded further, relying upon the axiom long recognized by common law and the courts of this country that one must so use his property and exercise his rights as not to impose upon another an unwarranted interference with his property and rights, and held that when the exercise of the right to picket was attended with a context of violence, depredation and abuse, interference by the state to preserve law and order was legally forthcoming. The *Thornhill* case also recognized that interference by the State under such circumstances was a valid exercise of its police power.

The State respectfully insists that a like conclusion must be reached in the case at bar.

It is submitted that the petitioner's contention that he was denied due process in that he was convicted upon a charge not made, and under a statute vague and indefinite in its terms, is without merit. The affidavit was drafted in the language of the statute, and not only sufficiently apprised petitioner of the charge against him, but also informed him of the nature of the accusation. Such an affidavit in code form has been held sufficient by the courts of Alabama, and only where there is a complete lack of certainty in the charge made will there have occurred a denial of due process. Such was not the case here.

It is further submitted that the trial judge, who was thoroughly conversant with the testimony presented by the numerous witnesses, and the Alabama Court of Appeals, after its study of the record containing such testimony, found that sufficient evidence was introduced to establish beyond a reasonable doubt that the petitioner, with several others, entered into a conspiracy, combination or agreement to perform acts of violence or lawlessness to injure the complaining witness' property and business. These facts, in the light of the *Meadowmoor* case, constitute such conduct as is subject to regulation or interference by the State of Alabama, which, by the enactment of the statute in question, has seen fit to protect its citizens therefrom.

The State of Alabama respectfully submits that petitioner's petition for writ of certiorari should not be allowed; or, in the alternative, that the judgments of the Alabama Court of Appeals and the Supreme Court of Alabama should be affirmed.

Respectfully submitted,

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ON THE BRIEF

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a copy of the foregoing Brief to Hon. Joseph A. Padway, 736 Bowen Building, Washington, D. C. and Hon. Merwin Koonce, Florence, Alabama, Counsel for petitioner, on this the 23 day of October, 1943.

WILLIAM N. McQUEEN

Acting Attorney General

Counsel for Respondent.

